

**BEFORE THE  
COMMISSION ON LANDLORD-TENANT AFFAIRS  
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of	*	
	*	
Martine Portee	*	
	*	
Complainant	*	
	*	
V.	*	Case No. 32086
	*	
James and Naomi Borchers	*	
	*	
Respondents	*	

Rental Facility: 8807 Plymouth Street, #2, Silver Spring, MD (Rental License No. 17679)

**DECISION AND ORDER**

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended ("County Code"), and the Commission having considered the testimony and evidence of record, it is therefore, this 23<sup>rd</sup> day of December, 2010, found, determined, and ordered as follows:

**BACKGROUND**

On October 18, 2010, Martine Portee ("Complainant"), current tenant at 8807 Plymouth Street, #2, Silver Spring, Maryland ("Apartment"), an apartment unit at 8807 Plymouth Street Apartments ("Property"), filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs ("Department"), identified as Landlord-Tenant Case No. 32086, in which she alleged that James and Naomi Borchers ("Respondents"), owners of the Property, without a reasonable basis used harassment and threats of eviction to prevent her from filing further complaints with the Department and other County Agencies. By correspondence dated October 29, 2010, the Complainant additionally advised that on October 20, 2010, the Respondents issued her a Notice To Vacate the Apartment by December 31, 2010, which she contends was issued in retaliation for her filing a complaint with the Department, in violation of Section 8-206 of the Real Property Article, Annotated Code of Maryland, as amended ("Real Property Article"); Section 8-208.1 of the Real Property Article; and, Section 29-33 of the County Code. To resolve her complaint, the Complainant requests that the Respondents rescind the Notice To Vacate and come into complete compliance with the law.

The Respondents contend that: (1) until they received the Complainant's Landlord – Tenant complaint identified as Case No. 32086, they were unaware that the Complainant had filed complaints with Agencies of Montgomery County Government; (2) the October 20, 2010, Notice To Vacate was issued because the Complainant failed to come to their office to sign a written lease agreement after repeated verbal requests to do so; and, (3) they advised the

Complainant that if she executed a written lease agreement, they would rescind the October 20, 2010, Notice To Vacate.

After determining that Case No. 32086 was not susceptible to conciliation, the Department referred this matter to the Commission, and on December 7, 2010, the Commission voted to conduct a public hearing on December 21, 2010. The public hearing in the matter of Case No. 32086, Martine Portee v. James and Naomi Borchers, was held on December 21, 2010.

The record reflects that the Complainant and the Respondents were given proper notice of the hearing date and time. Present at the hearing and offering evidence were the Complainant, Martine Portee, and Respondent, James Borchers. Additionally called to testify were Commission witness Department of Housing and Community Affairs Housing Code Enforcement Inspector Ivan Eloisa; Complainant's witnesses James R. Portee; and, Douglass Portee.

The Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into the record three (3) exhibits offered by the Complainant: (1) a letter dated December 21, 2010, signed by Donna McLaren, identified as Complainant's Exhibit No. 1; (2) a letter dated November 30, 2010, from James Borchers to Martine Portee, identified as Complainant's Exhibit No. 2; and, (3) a lease agreement dated January 1, 2010, which had been executed by the Respondents but not the Complainant, identified as Complainant's Exhibit No. 3.

### **FINDINGS OF FACT**

Based on the evidence of record, the Commission makes the following findings of fact:

1. The Complainant's tenancy at the Property began on or about December 15, 2009.
2. No written lease was provided to the Complainant at the beginning of her tenancy.
3. No written lease has been fully executed by the Complainant and the Respondents.
4. Effective December 31, 2010, the Complainant is a month-to-month tenant.
5. On October 20, 2010, the Respondents issued the Complainant a Notice To Vacate the property effective December 31, 2010. No reason for the Notice To Vacate was provided by the Respondents.
6. The Commission finds credible the testimony of the Complainant that she made complaints to the Respondents regarding the physical condition of the Property, as well as noise and activities of her neighbors at the Property which the Complainant found objectionable.
7. The Commission finds credible the testimony of the Complainant that she made complaints to the Department and the Department of Environmental Protection, regarding

the physical condition of the Property, as well as noise and activities of her neighbors which the Complainant found objectionable at the Property.

8. The Commission finds credible the testimony of Respondent James Borchers that it is his policy as a landlord to have all tenants sign an initial written lease agreement, and upon expiration of the initial written lease agreement to have the tenants continue their tenancies on a month-to-month basis.

9. The Commission finds credible the testimony of Respondent James Borchers that he made an effort to contact the Complainant to sign a written lease agreement.

10. The Commission finds credible the testimony of Respondent James Borchers that the notice to vacate effective December 31, 2010, was issued because he had no written lease agreement with the Complainant.

11. The Commission finds credible the testimony of the Complainant and Respondent James Borchers that on December 1, 2010, the Respondents delivered to the Complainant's Apartment a written month-to-month lease agreement offer to become effective as of January 1, 2011, and correspondence advising that if the lease was executed, the Notice To Vacate would be rescinded.

12. The Commission finds credible the testimony of the Complainant that she received the December 1, 2010, lease offer and correspondence, but chose not to sign the lease.

### **CONCLUSIONS OF LAW**

Accordingly, based upon a full and fair consideration of the evidence, the Commission on Landlord-Tenant Affairs concludes that:

1. Pursuant to Section 8-208 (a) of the Real Property Article, "Written leases - In general. - (1) On or after October 1, 1999, any landlord who offers 5 or more dwelling units for rent in the State may not rent a residential dwelling unit without using a written lease. (2) If a landlord fails to comply with paragraph (1) of this subsection, the term of tenancy is presumed to be 1 year from the date of the tenant's first occupancy unless the tenant elects to end the tenancy at an earlier date by giving one month's notice." The Commission finds that the Complainant's initial term of tenancy began on December 15, 2009, and expired on December 14, 2010, in compliance with Section 8-208 (a)(2) of the Real Property Article.

2. Pursuant to Section 8-402(b)(3)(iii) of the Real Property Article, "Holding over...In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month-to-month but less than from year to year." The Commission finds that the October 20, 2010, Notice To Vacate is in compliance with Section 8-402(b)(3)(iii) of the Real Property Article.

3. The Complainant failed to substantiate that the Respondent harassed, threatened eviction or issued the October 20, 2010, Notice To Vacate in retaliation for her filing complaints with the Department and other County agencies. The Commission found no evidence of

violation of Section 8-206 Retaliatory Evictions in Montgomery County of the Real Property Article; Section 8-208.1 Retaliatory evictions of the Real Property Article; or Section 29-33 Rights of Tenants Generally, of the County Code.

**ORDER**

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby finds that no violation of applicable law or lease has occurred on the part of the Respondents, and that the Respondents have not caused a defective tenancy. Therefore, Case No. 32086, Portee v Borchers is DISMISSED.<sup>1</sup>

The foregoing decision was concurred in unanimously by Commissioner Nancy Cohen, Commissioner David Peller and Commissioner Denise Hawkins, Panel Chair.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules governing administrative appeals.

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Denise Hawkins, Panel Chair  
Commission on Landlord-Tenant

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<sup>1</sup> Under the circumstances, the Commission understands that it is not legally binding, but the Commission appeals to the Respondents to consider extending the expiration of the Notice To Vacate from December 31, 2010, to February 28, 2011, to allow the Complainant additional time to relocate.